

AUG 25 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE ALBERTO ALMADER-SALAS,

Defendant - Appellant.

No. 05-10792

D.C. No. CR-05-00087-HDM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted August 21, 2006**

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Jorge Alberto Almader-Salas appeals from the sentence imposed following his guilty plea to being found in the United States after illegal reentry, in violation of 8 U.S.C. § 1326(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Almader-Salas first contends that the district court erred by declining to consider his argument that the disparity between his sentences, and the sentences imposed on similarly-situated defendants who are prosecuted in districts with fast-track programs, is unwarranted and renders his sentences unreasonable. He further contends that this disparity violates his equal protection rights. These contentions are foreclosed by this court's holding in *United States v. Marcial-Santiago*, 447 F.3d 715, 717-19 (9th Cir. 2006).

Almader-Salas next contends that the district court erred by sentencing him to a term of 41 months when he only pled to the elements of 8 U.S.C. § 1326(a), which carries a maximum sentence of two years. He also contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is no longer good law in light of the intervening Supreme Court decision *Shepard v. United States*, 544 U.S. 13 (2004).

These contentions are foreclosed. *See United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006) (rejecting after *Shepard* the specific contention that a § 1326(b) enhancement cannot be applied where the defendant did not admit the prior conviction during a guilty plea); *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-*

Torres even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

AFFIRMED.